

for purposes of applying this section. Whether a service provider qualifies for the limitation on liability in any one of those subsections shall be based solely on the criteria in that subsection, and shall not affect a determination of whether that service provider qualifies for the limitations on liability under any other such subsection.

(Added Pub. L. 105-304, title II, §202(a), Oct. 28, 1998, 112 Stat. 2877; amended Pub. L. 106-44, §1(d), Aug. 5, 1999, 113 Stat. 222.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (h)(6), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

CODIFICATION

Another section 512 was renumbered section 513 of this title.

AMENDMENTS

1999—Subsec. (e). Pub. L. 106-44, §1(d)(1)(A), substituted “Limitation on Liability of Nonprofit Educational Institutions” for “Limitation on liability of nonprofit educational institutions” in heading.

Subsec. (e)(2). Pub. L. 106-44, §1(d)(1)(B), struck out par. heading “Injunctions”.

Subsec. (j)(3). Pub. L. 106-44, §1(d)(2), substituted “Notice and ex parte orders” for “Notice and Ex Parte Orders” in heading.

EFFECTIVE DATE

Pub. L. 105-304, title II, §203, Oct. 28, 1998, 112 Stat. 2886, provided that: “This title [enacting this section and provisions set out as a note under section 101 of this title] and the amendments made by this title shall take effect on the date of the enactment of this Act [Oct. 28, 1998].”

§ 513. Determination of reasonable license fees for individual proprietors

In the case of any performing rights society subject to a consent decree which provides for the determination of reasonable license rates or fees to be charged by the performing rights society, notwithstanding the provisions of that consent decree, an individual proprietor who owns or operates fewer than 7 non-publicly traded establishments in which nondramatic musical works are performed publicly and who claims that any license agreement offered by that performing rights society is unreasonable in its license rate or fee as to that individual proprietor, shall be entitled to determination of a reasonable license rate or fee as follows:

(1) The individual proprietor may commence such proceeding for determination of a reasonable license rate or fee by filing an application in the applicable district court under paragraph (2) that a rate disagreement exists and by serving a copy of the application on the performing rights society. Such proceeding shall commence in the applicable district court within 90 days after the service of such copy, except that such 90-day requirement shall be subject to the administrative requirements of the court.

(2) The proceeding under paragraph (1) shall be held, at the individual proprietor's election, in the judicial district of the district court with jurisdiction over the applicable consent

decree or in that place of holding court of a district court that is the seat of the Federal circuit (other than the Court of Appeals for the Federal Circuit) in which the proprietor's establishment is located.

(3) Such proceeding shall be held before the judge of the court with jurisdiction over the consent decree governing the performing rights society. At the discretion of the court, the proceeding shall be held before a special master or magistrate judge appointed by such judge. Should that consent decree provide for the appointment of an advisor or advisors to the court for any purpose, any such advisor shall be the special master so named by the court.

(4) In any such proceeding, the industry rate shall be presumed to have been reasonable at the time it was agreed to or determined by the court. Such presumption shall in no way affect a determination of whether the rate is being correctly applied to the individual proprietor.

(5) Pending the completion of such proceeding, the individual proprietor shall have the right to perform publicly the copyrighted musical compositions in the repertoire of the performing rights society by paying an interim license rate or fee into an interest bearing escrow account with the clerk of the court, subject to retroactive adjustment when a final rate or fee has been determined, in an amount equal to the industry rate, or, in the absence of an industry rate, the amount of the most recent license rate or fee agreed to by the parties.

(6) Any decision rendered in such proceeding by a special master or magistrate judge named under paragraph (3) shall be reviewed by the judge of the court with jurisdiction over the consent decree governing the performing rights society. Such proceeding, including such review, shall be concluded within 6 months after its commencement.

(7) Any such final determination shall be binding only as to the individual proprietor commencing the proceeding, and shall not be applicable to any other proprietor or any other performing rights society, and the performing rights society shall be relieved of any obligation of nondiscrimination among similarly situated music users that may be imposed by the consent decree governing its operations.

(8) An individual proprietor may not bring more than one proceeding provided for in this section for the determination of a reasonable license rate or fee under any license agreement with respect to any one performing rights society.

(9) For purposes of this section, the term “industry rate” means the license fee a performing rights society has agreed to with, or which has been determined by the court for, a significant segment of the music user industry to which the individual proprietor belongs.

(Added Pub. L. 105-298, title II, §203(a), Oct. 27, 1998, 112 Stat. 2831, §512; renumbered §513, Pub. L. 106-44, §1(c)(1), Aug. 5, 1999, 113 Stat. 221.)

AMENDMENTS

1999—Pub. L. 106-44 renumbered section 512 of this title as this section.

EFFECTIVE DATE

Section effective 90 days after Oct. 27, 1998, see section 207 of Pub. L. 105-298, set out as an Effective Date of 1998 Amendments note under section 101 of this title.

CHAPTER 6—MANUFACTURING REQUIREMENTS, IMPORTATION, AND EXPORTATION

Sec.

601. Manufacture, importation, and public distribution of certain copies.
- 602.¹ Infringing importation of copies or phonorecords.
603. Importation prohibitions: Enforcement and disposition of excluded articles.

AMENDMENTS

2008—Pub. L. 110-403, title I, §105(a), Oct. 13, 2008, 122 Stat. 4259, substituted “MANUFACTURING REQUIREMENTS, IMPORTATION, AND EXPORTATION” for “MANUFACTURING REQUIREMENTS AND IMPORTATION” in chapter heading.

§ 601. Manufacture, importation, and public distribution of certain copies

(a) Prior to July 1, 1986, and except as provided by subsection (b), the importation into or public distribution in the United States of copies of a work consisting preponderantly of nondramatic literary material that is in the English language and is protected under this title is prohibited unless the portions consisting of such material have been manufactured in the United States or Canada.

(b) The provisions of subsection (a) do not apply—

(1) where, on the date when importation is sought or public distribution in the United States is made, the author of any substantial part of such material is neither a national nor a domiciliary of the United States or, if such author is a national of the United States, he or she has been domiciled outside the United States for a continuous period of at least one year immediately preceding that date; in the case of a work made for hire, the exemption provided by this clause does not apply unless a substantial part of the work was prepared for an employer or other person who is not a national or domiciliary of the United States or a domestic corporation or enterprise;

(2) where United States Customs and Border Protection is presented with an import statement issued under the seal of the Copyright Office, in which case a total of no more than two thousand copies of any one such work shall be allowed entry; the import statement shall be issued upon request to the copyright owner or to a person designated by such owner at the time of registration for the work under section 408 or at any time thereafter;

(3) where importation is sought under the authority or for the use, other than in schools, of the Government of the United States or of any State or political subdivision of a State;

(4) where importation, for use and not for sale, is sought—

(A) by any person with respect to no more than one copy of any work at any one time;

(B) by any person arriving from outside the United States, with respect to copies

forming part of such person's personal baggage; or

(C) by an organization operated for scholarly, educational, or religious purposes and not for private gain, with respect to copies intended to form a part of its library;

(5) where the copies are reproduced in raised characters for the use of the blind; or

(6) where, in addition to copies imported under clauses (3) and (4) of this subsection, no more than two thousand copies of any one such work, which have not been manufactured in the United States or Canada, are publicly distributed in the United States; or

(7) where, on the date when importation is sought or public distribution in the United States is made—

(A) the author of any substantial part of such material is an individual and receives compensation for the transfer or license of the right to distribute the work in the United States; and

(B) the first publication of the work has previously taken place outside the United States under a transfer or license granted by such author to a transferee or licensee who was not a national or domiciliary of the United States or a domestic corporation or enterprise; and

(C) there has been no publication of an authorized edition of the work of which the copies were manufactured in the United States; and

(D) the copies were reproduced under a transfer or license granted by such author or by the transferee or licensee of the right of first publication as mentioned in subclause (B), and the transferee or the licensee of the right of reproduction was not a national or domiciliary of the United States or a domestic corporation or enterprise.

(c) The requirement of this section that copies be manufactured in the United States or Canada is satisfied if—

(1) in the case where the copies are printed directly from type that has been set, or directly from plates made from such type, the setting of the type and the making of the plates have been performed in the United States or Canada; or

(2) in the case where the making of plates by a lithographic or photoengraving process is a final or intermediate step preceding the printing of the copies, the making of the plates has been performed in the United States or Canada; and

(3) in any case, the printing or other final process of producing multiple copies and any binding of the copies have been performed in the United States or Canada.

(d) Importation or public distribution of copies in violation of this section does not invalidate protection for a work under this title. However, in any civil action or criminal proceeding for infringement of the exclusive rights to reproduce and distribute copies of the work, the infringer has a complete defense with respect to all of the nondramatic literary material comprised in the work and any other parts of the work in which the exclusive rights to reproduce and distribute

¹ So in original. Does not conform to section catchline.